Pathma d/o Naganather & Anor v Nivedita d/o Naganather

COURT OF APPEAL (PUTRAJAYA)
AUGUSTINE PAUL FCJ, MOKHTAR SIDIN AND MOHD GHAZALI JJCA
28 SEPTEMBER 2005

Land Law — Ownership — Beneficial ownership in dispute — Whether land held in trust — Whether High Court judge dealt with material issues relevant to resolve issues in dispute

In this case, land held under Grant No 26496 Lot 211, Section 96, Kuala Lumpur ('the land') was registered in the name of the defendant. The plaintiffs prayed for a declaration, inter alia, that the land was held by the defendant in trust, on behalf of the children, except for the deceased and his wife, Manickam. The plaintiffs and the defendant come from a family of six children. Their father was the deceased who passed away in 1960. He had purchased the land prior to his demise. It was registered in equal shares in his name and that of Kandasamy, the eldest son in the family. After the death of the deceased his half share in the land was transferred into the name of Manickam. All the children had renounced their rights to the land in favour of their mother in consideration of love and affection. Kandasamy was declared a bankrupt and his half share vested in the Official Assignee. In 1962, this half share was transferred to the defendant. The defendant led evidence to show that she had paid RM12,000 to Kandasamy as consideration for the transfer. In 1983, the defendant purchased the half share in the land held by Manickam with a government housing loan that she had obtained. It was the contention of the plaintiffs that the purchase money obtained from the government housing loan was spent by the defendant herself and not given to Manickam. On the other hand, the defendant produced a receipt ('exh D31') issued by a law firm to show that a payment of RM90,000 was received by Manickam. Thus, the whole land was registered in the defendant's name. Subsequently, the defendant transferred the land to the second plaintiff upon receipt of a part-payment of RM185,000. The second plaintiff failed to pay the balance sum of RM450,000 to complete the transfer. The defendant demanded that the land be returned to her. A consent judgment was entered into between them pursuant to which the defendant was to return the sum of RM185,000 to the second plaintiff who in turn was to re-transfer the land to the defendant. In the suit that led to the consent judgment, the first plaintiff had affirmed a statutory declaration saying that the land belonged to the defendant. A similar declaration was affirmed by Sivananda Dewi, a doctor. The learned High Court judge did not accept the denial of the contents of the two statutory declarations by the first plaintiff. Accordingly, the claim of the plaintiffs was dismissed with costs. This appeal was by the plaintiffs.

Held, dismissing the appeal:

(1) The High Court judge had dealt with the material issues which were relevant to resolve the issues in dispute. He had taken into consideration exh D31 which clearly showed that Manickam had received the sum of RM90,000 from the defendant as opposed to the contention of the plaintiffs that it was not. He

had considered the circumstances that led to the consent judgment between the second plaintiff and the defendant. In connection with this judgment, he had evaluated the evidence leading to the affirmation of the statutory declarations affirmed by the first plaintiff and Sivananda Dewi where they had acknowledged that the land belonged to the defendant. Therefore, the High Court judge had correctly considered the necessary evidence to support his conclusion (see para 5).

(2) It was illogical for the second plaintiff to now argue that the land was trust property when he, while claiming to be a beneficiary, had attempted to purchase it. The attempt was a clear indication that the defendant was its beneficial owner. However, the consent judgment cannot operate as res judicata in respect of the present action as there was no determination by agreement or otherwise on the question of whether the land was held on trust by the defendant. It merely reverted the rights of the parties to the question that existed prior to 1992. The capacity in which the land was held at that time was a question of fact which had been determined by the High Court judge in favour of the defendant. His reliance on the consent judgment as res judicata therefore did not alter the final outcome of the case (see para 5).

[Bahasa Malaysia summary

Dalam kes ini, tanah yang dipegang di bawah Geran No 26496 Lot 211, Seksyen 96, Kuala Lumpur ('tanah tersebut') telah didaftarkan atas nama defendan. Plaintif-plaintif telah memohon untuk satu deklarasi, antara lain, bahawa tanah tersebut dipegang oleh defendan secara amanah, bagi pihak anak-anak kecuali untuk si mati dan isterinya, Manickam. Plaintif-plaintif dan defendan datang dari keluarga enam adik-beradik. Bapa mereka adalah si mati yang telah meninggal dunia pada tahun 1960. Beliau telah membeli tanah tersebut sebelum kematiannya. Ia telah didaftarkan dalam bahagian yang sama rata atas nama beliau dan Kandasamy, anak lelaki sulung dalam keluarga itu. Selepas kematian si mati separuh daripada bahagiannya dalam tanah tersebut telah dipindah milik kepada Manickam. Semua anak-anaknya telah melepaskan hak mereka atas tanah tersebut menyebelahi ibu mereka atas balasan kasih sayang. Kandasamy telah diisytiharkan seorang bankrap dan separuh daripada bahagiannya diletakkan di bawah Pegawai Pemegang Harta. Pada tahun 1962, separuh bahagian ini telah dipindah milik kepada defendan. Defendan telah mengemukakan keterangan untuk membuktikan bahawa beliau telah membayar RM12,000 kepada Kandasamy sebagai balasan untuk pindah milik itu. Pada tahun 1983, defendan telah membeli separuh bahagian dalam tanah tersebut yang dipegang oleh Manickam dengan pinjaman perumahan kerajaan yang beliau telah peroleh. Adalah hujah plaintif-plaintif bahawa wang belian yang diperoleh daripada pinjaman perumahan kerajaan telah dibelanjakan oleh defendan sendiri dan tidak diberikan kepada Manickam. Sebaliknya, defendan telah mengemukakan satu resit ('eksh D31') yang dikeluarkan oleh sebuah firma guaman untuk menunjukkan bahawa satu bayaran RM90,000 telah diterima oleh Manickam. Oleh itu, keseluruhan tanah tersebut telah didaftarkan atas nama defendan. Berikutan itu, defendan telah memindah milik tanah tersebut kepada plaintif kedua selepas menerima sebahagian bayaran berjumlah RM185,000. Plaintif kedua telah gagal untuk membayar baki berjumlah RM450,000 untuk menyempurnakan pindah milik itu. Defendan telah menuntut agar tanah tersebut di kembalikan kepada beliau. Satu

penghakiman persetujuan telah dimasuki antara mereka yang mana defendan hendaklah mengembalikan sejumlah RM185,000 kepada plaintif kedua yang perlu memindah milik semula tanah tersebut kepada defendan. Dalam guaman yang terdapat penghakiman persetujuan itu, plaintif pertama telah mengesahkan satu deklarasi statutori menyatakan bahawa tanah tersebut adalah milik defendan. Satu deklarasi yang sama telah disahkan oleh Sivananda Dewi, seorang doktor. Yang Arif Hakim Mahkamah Tinggi tidak menerima penafian kandungan kedua-dua deklarasi statutori oleh plaintif pertama itu. Sewajarnya, tuntutan plaintif-plaintif adalah ditolak dengan kos. Rayuan ini adalah oleh plaintif-plaintif.

Diputuskan, menolak rayuan tersebut:

(1) Yang Arif Mahkamah Tinggi telah membincangkan isu-isu penting yang relevan untuk menyelesaikan persoalan yang dipertikaikan. Beliau telah mengambil kira eksh D31 yang jelas menunjukkan bahawa Manickam telah menerima sejumlah RM90,000 daripada defendan yang bercanggah dengan hujah plaintif-plaintif yang menyatakan sebaliknya. Beliau telah mengambil kira keadaan yang menyebabkan penghakiman persetujuan antara plaintif kedua dan defendan. Berkaitan penghakiman ini, beliau telah meneliti keterangan yang menjurus kepada pengesahan deklarasi-deklarasi statutori yang disahkan oleh plaintif pertama dan Sivananda Dewi di mana mereka telah mengakui bahawa tanah tersebut adalah milik defendan. Oleh itu, hakim Mahkamah Tinggi dengan betul telah mengambil kira keterangan yang perlu untuk menyokong keputusan beliau (lihat perenggan 5).

(2) Adalah tidak logik untuk plaintif kedua sekarang berhujah bahawa tanah tersebut adalah harta atas amanah apabila beliau, tatkala mendakwa dirinya benefisiari, telah cuba untuk membelinya. Percubaan itu jelas menunjukkan bahawa defendan adalah pemilik benefisiari. Penghakiman persetujuan tidak boleh berfungsi sebagai res judicata berkaitan tindakan semasa kerana tiada penentuan oleh perjanjian atau sebaliknya tentang persoalan sama ada tanah tersebut dipegang atas amanah oleh defendan. Ia hanya mengembalikan hak pihak-pihak kepada persoalan yang timbul sebelum 1992. Kapasiti yang mana tanah tersebut dipegang pada masa itu adalah persoalan fakta yang telah diputuskan oleh hakim Mahkamah Tinggi menyebelahi defendan. Kebergantungan beliau atas penghakiman persetujuan sebagai res judicata oleh demikian tidak mengubah keputusan muktamad kes (lihat perenggan 5).]]

Notes

For cases on beneficial ownership in dispute, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 3110–3111.

Cases referred to

Clarke v Edinburgh Tramways Co (1919) SC 35 (refd)

Legislation referred to

National Land Code 1965 s 89(a)

Appeal from: Civil Suit No S2–22–189 of 2000 (High Court, Kulala Lumpur)

Atma Singh Veriah (DR John with him) (Atma Singh Veriah & Co) for the appellants.
A Kanesalingam (K Shanmugam with him) (Kanesalingam & Co) for the respondent.

Augustine Paul FCJ (delivering judgment of the court):

[1] In this case, land held under Grant No 26496 Lot 211, Section 96, Kuala Lumpur ('the land') is now registered in the name of the defendant. The plaintiffs prayed for a declaration, inter alia, that the land is held by the defendant in trust, on behalf of the children, except for Ishwari, of Naganather ('the deceased') and his wife, Manickam.

[2] The plaintiffs and the defendant come from a family of six children. Their father is the deceased who passed away in 1960. He had purchased the land prior to his demise. It was registered in equal shares in his name and that of Kandasamy, the eldest son in the family. After the death of the deceased, his half share in the land was transferred into the name of his wife, Manickam. All the children had renounced their rights to the land in favour of their mother in consideration of love and affection by executing deeds of renunciation. The learned High Court judge found that this half share had been transferred to Manickam pursuant to a court order dated 10 December 1982. The transfer to Manickam was registered on 4 January 1983. Kandasamy was declared a bankcrupt and his half share vested in the Official Assignee. In 1962, this half share was transferred to the defendant. She was duly registered as the owner of the half share. The defendant led evidence to show that she had paid RM12,000 to Kandasamy as consideration for the transfer. The transfer was witnessed by one Seenivasagam who affirmed a statutory declaration on 29 May 1998 to that effect. The plaintiffs alleged that the sum of RM12,000 was never paid by the defendant to Kandasamy. The learned High Court judge did not accept the evidence of the plaintiffs in view of the contents of the statutory declaration affirmed by Seenivasagam and the fact that the defendant is the registered owner gave her a vested right to the land under s 89(a) of the National Land Code 1965.

[3] In 1983, the defendant purchased the half share in the land held by Manickam with a government housing loan that she had obtained. Thus, the whole land was registered in the defendant's name. It was the contention of the plaintiffs that the purchase money obtained from the government housing loan was spent by the defendant herself and not given to Manickam. On the other hand, the defendant produced a receipt (exh D31) issued by a law firm to show that a payment of RM90,000 was received by Manickam. Subsequently, the defendant transferred the land to the second plaintiff upon receipt of a part-payment of RM185,000. The second plaintiff failed to pay the balance sum of RM450,000 to complete the transfer. The defendant demanded that the land be returned to her. A consent judgment was entered into between them pursuant to which the defendant was to return the sum of RM185,000 to the second plaintiff who in turn was to re-transfer the land to the defendant. In the suit that led to the consent judgment the first plaintiff, a teacher, had affirmed a statutory declaration saying that the land belongs

to the defendant. This declaration was prepared by an advocate and solicitor (DW3) who said that its contents were explained to the first plaintiff. A similar declaration was affirmed by Sivananda Dewi, a doctor. The learned High Court judge did not accept the denial of the contents of the two statutory declarations by the first plaintiff. Accordingly, the claim of the plaintiffs was dismissed with costs. This appeal is by the plaintiffs.

[4] It must be observed that this appeal is essentially grounded on findings of fact made by the learned trial judge. In dealing with a complaint against the judicial appreciation of evidence by a trial court, we are guided by the speech by Lord Shaw in *Clarke v Edinburgh Tramways Co* (1919) SC 35 at p 36:

> When a judge hears and sees witnesses and makes a conclusion or inference with regard to what on balance is the weight of their evidence, that judgment is entitled to great respect, and that quite irrespective of whether the judge makes any observations with regard to credibility or not. I can of course quite understand a Court of Appeal that says that it will not interfere in a case in which the judge has announced as part of his judgment that he believes one set of witnesses, having seen them and heard them, and does not believe another. But that is not the ordinary case of a cause in a court of justice. In courts of justice in the ordinary case, things are much more evenly divided; witnesses without any conscious bias towards a conclusion may have in their demeanour, in their manner, in their hesitation, in the nuance of their expression, in even the turns of he eyelid, left an impression upon the man who saw and heard them which can never be reproduced in the printed page. What in such circumstances, thus psychologically put, is the duty of an appellate court? In my opinion, the duty of an appellate court in those circumstances is for each judge of it to put to himself, as I now do in this case, the question: am I — who sit here without those advantages, sometimes broad and sometimes subtle, which are the privilege of the judge who heard and tried the case — in a position, not having those privileges, to come to a clear conclusion that the judge who had them was plainly wrong? If I cannot be satisfied in my own mind that the judge with those privileges was plainly wrong, then it appears to me to be my duty to defer to his judgment.

[5] In our opinion the learned trial judge had dealt with the material issues which are relevant to resolve the issues in dispute. He had taken into consideration exh P31 which clearly showed that Manickam had received the sum of RM90,000 from the defendant as opposed to the contention of the plaintiffs that it was not. He had considered the circumstances that led to the consent judgment between the second plaintiff and the defendant. In connection with this judgment, he had evaluated the evidence leading to the affirmation of the statutory declarations affirmed by the first plaintiff and Sivananda Dewi where they had acknowledged that the land belongs to the defendant. It was therefore our view that the learned trial judge had correctly considered the necessary evidence to support his conclusion. We can only add that it is illogical for the second plaintiff to now argue that the land is trust property when he, while claiming to be a beneficiary, had attempted to purchase it. The attempt is a clear indication that the defendant was its beneficial owner. However, the consent judgment cannot operate as res judicata in respect of the present action as there was no determination by agreement or otherwise on the question of whether the land is held on trust by the defendant. It merely reverted the rights of the parties to the question that existed prior to 1992. The capacity in which the land was held at that time is a question of fact which has been determined by the learned trial judge in

favour of the defendant. His reliance on the consent judgment as res judicata therefore does not alter the final outcome of the case. Accordingly, we dismissed the appeal with costs.

Appeal dismissed.

Reported by Peter Ling